

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Steven White,

Civil No. 15-1951 (DWF/SER)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Jim Benson,

Respondent.

This matter is before the Court upon *Pro Se* Petitioner Steven White's ("Petitioner") objections (Doc. No. 20) to Magistrate Judge Steven E. Rau's January 26, 2016 Report and Recommendation (Doc. No. 19) insofar as it recommends that:

(1) Respondent's Motion to Dismiss Motion to Accept Amended Memorandum of Law be granted; (2) Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody be denied; (3) Respondent's Motion to Dismiss Petition as Time Barred be denied as moot; (4) Petitioner's Motion to Accept Amended Memorandum of Law in Support of Habeas Corpus Petition be denied as moot; and (5) this action be dismissed with prejudice. Respondent Jim Benson ("Respondent") filed a responsive memorandum on February 24, 2016. (Doc. No. 22.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and

precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

In the Report and Recommendation, Magistrate Judge Rau concluded that Petitioner's habeas petition is untimely, equitable tolling does not apply, and therefore that the State's Second Motion to Dismiss should be granted. Further, Magistrate Judge Rau recommended that Petitioner's Motion to Amend be denied as moot. In his objections, Petitioner asks the Court to hear his habeas corpus petition in the interest of fairness and justice and that any procedural defaults should not be held against Petitioner because there was a breakdown of communication with his attorney and the lower courts. In addition, Petitioner maintains that it was always his intention to appeal his conviction.

Having carefully reviewed the record and considered Petitioner's objections, the Court concludes that Petitioner's objections do not warrant departure from Magistrate Judge Rau's recommendation. Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Steven White's objections (Doc. No. [20]) to Magistrate Judge Steven E. Rau's January 26, 2016 Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Steven E. Rau's January 26, 2016 Report and Recommendation (Doc. No. [19]) is **ADOPTED**.

3. Respondent's Motion to Dismiss Motion to Accept Amended Memorandum of Law (Doc. No. [15]) is **GRANTED**.

4. Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. No. [1]) is **DENIED**.

5. Respondent's Motion to Dismiss Petition as Time Barred (Doc. No. [7]) is **DENIED AS MOOT**.

6. Petitioner's Motion to Accept Amended Memorandum of Law in Support of Habeas Corpus Petition (Doc. No. [11]) is **DENIED AS MOOT**.

7. This action is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 15, 2016

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge